

Internal Revenue Service, Treasury

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issued, to the filing of a protest to such a ruling;

(ii) The petitioner has submitted prompt and complete responses to any requests by the Internal Revenue Service for further information; and

(iii) The Internal Revenue Service has had a reasonable time to act upon the request for the ruling, any protest thereto and any additional information submitted in response to any request made therefor by the Internal Revenue Service. If there has been a failure to make a determination, the Internal Revenue Service shall be deemed not to have had a reasonable time to act before the expiration of 270 days after the day on which petitioner properly filed the request for a ruling. In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

(3) *Effect of judgment.* The declaratory judgment or decree of the Tax Court, when final under section 7481, shall be binding on the parties to the case for purposes of section 367(a)(1). However, if the facts of the exchange differ from those presented to the Court, the judgment shall be binding only to the extent appropriate under the legal doctrines of estoppel and stare decisis.

(c) *Definitions*—(1) *Exchange described to section 367(a)(1).* For purposes of this section, an “exchange described in section 367(a)(1)” is an exchange in connection with which the petitioner has filed a ruling request pursuant to section 367(a)(1) and the regulations thereunder without regard to whether or not section 332, 351, 354, 355, 356 or 361 applies to the exchange.

(2) *Determination.* For purposes of this section, a “determination” is the Commissioner’s determination for purposes of section 367(a)(1), made in response to the petitioner’s protest to a ruling issued under section 367(a)(1)—

(i) That an exchange described in section 367(a)(1) is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or

(ii) Of the terms and conditions pursuant to which such an exchange will be determined not to be in pursuance of such a plan.

(d) *Effective date.* The provisions of this section shall apply with respect to pleadings filed after October 4, 1976, but only with respect to exchanges beginning after October 9, 1975.

(Approved by the Office of Management and Budget under control number 1545-0719)

(Sec. 367(a)(1), 90 Stat. 1634, 26 U.S.C. 367(a)(1) and 7805, 68A Stat. 917, 26 U.S.C. 7805, Internal Revenue Code of 1954)

[T.D. 7596, 44 FR 10707, Feb. 23, 1979, as amended by T.D. 7954, 49 FR 19466, May 8, 1984]

COURT REVIEW OF TAX COURT DECISIONS

§ 301.7481-1 Date when Tax Court decision becomes final; decision modified or reversed.

(a) *Upon mandate of Supreme Court.* Under section 7481(3)(A) of the Code, if the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(b) *Upon mandate of the Court of Appeals.* Under section 7481(3)(B) of the Code, if the decision of the Tax Court is modified or reversed by the U.S. Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the U.S. Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the

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Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

§ 301.7482-1 Courts of review; venue.

Under section 7482(b)(2) of the Code, decisions of the Tax Court may be reviewed by any U.S. Court of Appeals which may be designated by the Commissioner and the taxpayer by stipulation in writing.

§ 301.7483-1 Petition for review.

The decision of the Tax Court may be reviewed by a U.S. Court of Appeals as provided in section 7482 of the Code if a petition for such review is filed by either the Commissioner or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7484-1 Change of incumbent in office.

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

MISCELLANEOUS PROVISIONS

§ 301.7502-1 Timely mailing of documents and payments treated as timely filing and paying.

(a) *General rule.* Section 7502 provides that, if the requirements of that section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope or other appropriate wrapper (envelope) in which the document or payment was mailed. Thus, if the envelope that contains the document or payment has a timely postmark, the document or payment is considered timely filed or paid even if it is received after the last date, or the last day of the period, prescribed for filing the document or making the payment.

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Section 7502 does not apply in determining whether a failure to file a return or pay a tax has continued for an additional month or fraction thereof for purposes of computing the penalties and additions to tax imposed by section 6651. Except as provided in section 7502(e) and § 301.7502-2, relating to the timely mailing of deposits, and paragraph (d) of this section, relating to electronically filed documents, section 7502 is applicable only to those documents or payments as defined in paragraph (b) of this section and only if the document or payment is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (e) of this section.

(b) *Definitions*—(1) *Document defined.* (i) The term *document*, as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in paragraph (b)(1)(ii), (iii), or (iv) of this section.

(ii) The term does not include returns, claims, statements, or other documents that are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing.

(iii) The term does not include any document filed in any court other than the Tax Court, but the term does include any document filed with the Tax Court, including a petition and a notice of appeal of a decision of the Tax Court.

(iv) The term does not include any document that is mailed to an authorized financial institution under section 6302. However, see § 301.7502-2 for special rules relating to the timeliness of deposits and documents required to be filed with deposits.

(2) *Claims for refund.* In the case of certain taxes, a return may constitute a claim for credit or refund. In such a case, section 7502 is applicable to the claim for credit or refund if the conditions of such section are met, irrespective of whether the claim is also a return. For rules regarding claims for refund on late filed tax returns, see paragraph (f) of this section.